



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

July 10, 2020

*Via electronic mail*

Mr. Benjamin Silver  
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*Via electronic mail*

Dr. Rodolfo Hernandez  
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RE: OMA Request for Review – 2017 PAC 48412

Dear Mr. Silver and Dr. Hernandez:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)).<sup>1</sup>

On June 20, 2017, Mr. Benjamin Silver, on behalf of the Citizen Advocacy Center, submitted a Request for Review to the Public Access Bureau alleging possible violations of OMA by the Bilingual Parent Advisory Committee (Committee) of Cicero School District 99 (School District). Specifically, he alleged that the Committee is an advisory body of the School District, and that the Committee failed to provide an opportunity for public comment at its April

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<sup>1</sup>In issuing this letter, we recognize that it is coming long after the OMA dispute took place. Because it raises a legal question that may reoccur, however, this letter is intended to provide guidance to the public body and requester.

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21, 2017, and May 12, 2017, meetings in violation of section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)).

On July 3, 2017, this office forwarded a copy of Mr. Silver's Request for Review to the School District and asked it to respond in writing to Mr. Silver's allegations. In particular, this office asked the School District to explain whether any members of the public attempted to provide public comment at the meetings in question and whether the Committee permitted those individuals to address the Committee during its meetings. If the School District did not consider the Committee to be a "public body" as defined in section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)), this office asked it to explain in detail the Committee's purpose and duties, as well as its relationship to the School District. Additionally, this office asked the School District to provide copies of any recordings, written minutes, and other written documentation, if any, of the Committee's April 21, 2017, and May 12, 2017, meetings. On July 31, 2017, this office received the requested materials. On August 1, 2017, this office forwarded a copy of the School District's written response to Mr. Silver; he replied on August 10, 2017.

### DETERMINATION

"In order that the people shall be informed, the General Assembly finds and declares that it is the intent of [OMA] to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016).

Section 1.02 of OMA defines a "public body" as:

[A]ll legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof.

An "advisory body," for purposes of OMA, is an entity that has defined responsibilities and is a formal part of the structure of the public body that it advises. *Board of Regents of Regency University System v. Reynard*, 292 Ill. App. 3d 968, 977-78 (4th Dist. 1997). In contrast, OMA "is not intended to open to the public the deliberations of merely informal advisory committees who discuss internal" affairs of a public body. *Pope v. Parkinson*, 48 Ill. App. 3d 797, 800 (4th Dist. 1977). Factors to consider in determining whether a group constitutes an advisory body under OMA include:

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who appoints the members of the entity, the formality of their appointment, and whether they are paid for their tenure; the entity's assigned duties, including duties reflected in the entity's bylaws or authorizing statute; whether its role is solely advisory or whether it also has a deliberative or investigative function; whether the entity is subject to government control or otherwise accountable to any public body; whether the group has a budget; its place within the larger organization or institution of which it is a part; and the impact of decisions or recommendations that the group makes. *University Professionals of Illinois v. Stukel*, 344 Ill. App. 3d 856, 865 (1st Dist. 2003).

In *Stukel*, the plaintiff alleged that a group of presidents and chancellors of public universities (Council), which made recommendations to the Illinois Board of Higher Education (IBHE), violated OMA by meeting privately before IBHE meetings to discuss issues related to funding for public education. *Stukel*, 344 Ill. App. 3d at 857-58. The court held that the Council was not an advisory body of IBHE in part because it was not incorporated into the formal organizational structure of IBHE, a factor that the court identified as a "primary consideration in determining whether an organization is a public body under the Meetings Act." *Stukel*, 344 Ill. App. 3d at 865. The court explained that "the Council was formed by the presidents and chancellors of the various state universities to express its views to the IBHE. Granted, its role is advisory but that role is one that the Council [and not IBHE] created." *Stukel*, 344 Ill. App. 3d at 866. The court also noted that the plaintiff's complaint did not allege that the group had a "deliberative or investigative function in relation to the IBHE or that the Council is subject to government control. It does not appear that the Council is otherwise accountable to any public body. It does not appear to have a budget[.]" *Stukel*, 344 Ill. App. 3d at 866. Further, "no member of the Council is a member of the IBHE." *Stukel*, 344 Ill. App. 3d at 866; *see also Pope v. Parkinson*, 48 Ill. App. 3d 797, 800 (4th Dist. 1997) (committee of four faculty members and four students that advised director of sports stadium and chancellor was not an advisory body because OMA "is not intended to open to the public the deliberations of merely informal advisory committees who discuss internal University affairs."); *People ex rel. Cooper v. Carlson*, 28 Ill. App. 3d 569, 572 (2d Dist. 1975) (OMA does not apply to voluntary "technical staff" meetings of "department heads or employees who seek to improve with dispatch their performance or function of assisting in the conduct of the people's business.").

Conversely, in *Reynard*, the appellate court concluded that the Athletic Council of Illinois State University (ISU) was an advisory body subject to FOIA. *Reynard*, 292 Ill. App. 3d at 979. The Athletic Council serves "as an advisory body to the athletic director, with primary advisory responsibility to the president. It gives advice on the development of budgets and

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policies governing the intercollegiate athletic program." *Reynard*, 292 Ill. App. 3d at 971. The Athletic Council "exists to provide faculty input to the decision-making bodies at ISU." *Reynard*, 292 Ill. App. 3d at 972. The athletic director "is free to reject its advice and there have been occasions when he has done so. The Council deals only with internal ISU matters, it has no budget, and none of its members are paid." *Reynard*, 292 Ill. App. 3d at 972. In concluding that the Athletic Council was an advisory body subject to the requirements of OMA, however, the court emphasized that the Council is "part of the formal organizational structure of ISU and its duties and responsibilities are set forth in the supplement [to the bylaws of the ISU Senate]. The broad scope of the Council's responsibilities as set forth in the supplement contrasts sharply with the limited duties of the committee in *Pope [v. Parkinson]*." *Reynard*, 292 Ill. App. 3d at 978.

In its response to this office, the School District asserted that the two meetings in question "were the second and third days of a parent workshop presented by Victoria Infante of Family Bridges."<sup>2</sup> According to the School District, "parents participated in activities and the presenter asked them questions regarding the topics" that were presented during those two days.<sup>3</sup> The School District contended that no parents attempted to provide public comment at the meetings. The School District asserted, in pertinent part:

Isabel Ramirez, BPAC's Parent Outreach Liaison, was present at both the April 21, 2017 and May 12, 2017 meetings and she stated that she was not aware of any members of the public who attempted to provide public comment and were not allowed to do so. \* \* \* Ms. Ramirez stated that during the workshops parents were encouraged to share their experiences, all parents were able to respond to the presenter's questions, and she was not aware of any members of the public who tried to make a comment on anything other than the presentation itself.<sup>[4]</sup>

The School District further denied Mr. Silver's claim that the Committee is a "public body" under OMA. The School District stated that the Committee was established pursuant to section 5/14C-10 of the School Code (105 ILCS 5/14C-10 (West 2016)), which provides: "Each school district shall, accordingly, establish a parent advisory committee which affords parents the opportunity

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<sup>2</sup>Letter from Emily Witt, Attorney for Board of Education of Cicero School District 99, Del Galdo Law Group, LCC, to Leah Bartelt, Assistant Attorney General, Public Access Bureau (July 13, 2017).

<sup>3</sup>Letter from Emily Witt, Attorney for Board of Education of Cicero School District 99, Del Galdo Law Group, LCC, to Leah Bartelt, Assistant Attorney General, Public Access Bureau (July 13, 2017).

<sup>4</sup>Letter from Emily Witt, Attorney for Board of Education of Cicero School District 99, Del Galdo Law Group, LCC, to Leah Bartelt, Assistant Attorney General, Public Access Bureau (July 13, 2017).

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effectively to express their views and which ensures that [transitional bilingual education programs] are planned, operated, and evaluated with the involvement of, and in consultation with, parents of children served by the programs." Applying the *Stukel* factors, the School District argued that the Committee did not meet the characteristics of a public body:

**(1) Who appoints the members of the entity, the formality of their appointment, and whether they are paid for their tenure**

The School District asserted that it does not appoint members of the Committee, and members are not paid. The School District stated that the Committee's membership is instead governed by section 5/14C-10 of the School Code, which provides: "Such committees shall be composed of parents of children enrolled in transitional bilingual education programs, transitional bilingual education teachers, counselors, and representatives from community groups; provided, however, that a majority of each committee shall be parents of children enrolled in the transitional bilingual education program." According to the School District, "[p]arents of District students enrolled in transitional bilingual education programs that attend the BPAC meetings are considered members of BPAC. General members are not appointed and anyone can attend the BPAC meetings."<sup>5</sup> The School District stated that the Committee mainly is comprised of program parents and guardians, but also "includes transitional bilingual education teachers, counselors and community leaders."<sup>6</sup>

**(2) The entity's assigned duties, including duties reflected in the entity's bylaws or authorizing statute**

The School District contended that the Committee "does not have any assigned duties from the District and it operates autonomously."<sup>7</sup> The School District directed this office to section 5/14C-10 of the School Code, emphasizing that the provision provides: "Once established, these committees shall autonomously carry out their affairs, including the election of officers and the establishment of internal rules, guidelines, and procedures." 105 ILCS 5/14C-10 (West 2016).

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<sup>5</sup>Letter from Emily Witt, Attorney for Board of Education of Cicero School District 99, Del Galdo Law Group, LCC, to Leah Bartelt, Assistant Attorney General, Public Access Bureau (July 13, 2017).

<sup>6</sup>Letter from Emily Witt, Attorney for Board of Education of Cicero School District 99, Del Galdo Law Group, LCC, to Leah Bartelt, Assistant Attorney General, Public Access Bureau (July 13, 2017).

<sup>7</sup>Letter from Emily Witt, Attorney for Board of Education of Cicero School District 99, Del Galdo Law Group, LCC, to Leah Bartelt, Assistant Attorney General, Public Access Bureau (July 13, 2017).

**(3) Whether the entity's role is solely advisory or whether it also has a deliberative or investigative function**

The School District argued that the Committee's function "is solely advisory."<sup>8</sup> The School District acknowledged that the Committee provides feedback and suggestions to the School District concerning its transitional bilingual education program, but argued that the Committee "does not make any decisions regarding the programs and there is no guarantee that the District will implement any of BPAC's recommendations."<sup>9</sup> The School District further asserted that it did not have a formal process for reviewing the Committee's recommendations.

**(4) Whether the entity is subject to government control or otherwise accountable to any public body**

The School District contended that the Committee is not subject to its control and that it "merely facilitates the transmission of information regarding the bilingual programs to parents and community members."<sup>10</sup> According to the School District, the Committee meets monthly and provides parents of children in transitional bilingual education programs the chance to "learn about the curriculum, attend workshops, participate in conferences, and to provide feedback regarding these programs to the District."<sup>11</sup>

**(5) Whether the group has a budget**

The School District stated that the Committee does not have a budget.

**(6) The entity's place within the larger organization or institution of which it is a part**

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<sup>8</sup>Letter from Emily Witt, Attorney for Board of Education of Cicero School District 99, Del Galdo Law Group, LCC, to Leah Bartelt, Assistant Attorney General, Public Access Bureau (July 13, 2017).

<sup>9</sup>Letter from Emily Witt, Attorney for Board of Education of Cicero School District 99, Del Galdo Law Group, LCC, to Leah Bartelt, Assistant Attorney General, Public Access Bureau (July 13, 2017).

<sup>10</sup>Letter from Emily Witt, Attorney for Board of Education of Cicero School District 99, Del Galdo Law Group, LCC, to Leah Bartelt, Assistant Attorney General, Public Access Bureau (July 13, 2017).

<sup>11</sup>Letter from Emily Witt, Attorney for Board of Education of Cicero School District 99, Del Galdo Law Group, LCC, to Leah Bartelt, Assistant Attorney General, Public Access Bureau (July 13, 2017).

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The School District contended that the Committee is "separate from the overall organization of the District."<sup>12</sup> In particular, the School District emphasized that the Committee conducts its affairs autonomously pursuant to the School Code.

**(7) The impact of decisions or recommendations that the group makes**

The School District contended that the Committee "does not directly make any decisions regarding the District's bilingual program."<sup>13</sup> The School District reiterated that although the Committee makes suggestions to the School District about its bilingual programs, it may decline to adopt those suggestions.

In his reply, Mr. Silver argued that the Committee "is neither informal or an internal administrative entity" in contrast to the entities examined in *Stukel*, *Pope*, and *Carlson*.<sup>14</sup> He contended that the Committee was similar to the group of presidents and chancellors examined in *Stukel* in only three of the discussed factors. Specifically, he acknowledged that the Committee lacked a budget, did not pay its members, and did not include members of the higher body, but contended that the council in *Reynard* likewise did not meet those factors. Mr. Silver disputed the School District's claim that the Committee is separate from the School District's formal organizational structure. He argued that the Committee "is defined by state statute and is a formal, standing advisory committee to a school board that has a Transitional Bilingual Education program. State statute and administrative rules establishing the BPAC describe concrete duties of a BPAC and mandates that the school board receive input from the BPAC."<sup>15</sup> Mr. Silver cited section 228.30(c)(4) of title 23 of the Administrative Code (23 Ill. Adm. Code §228.30(c)(4) (2014), amended at 38 Ill. Reg. 19757, effective September 29, 2014), which provides that school districts with transitional bilingual education programs are to establish a parent advisory committee that "shall participate in the planning, operation, and evaluation of programs." That provision further provides, in pertinent part:

A) The committee shall:

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<sup>12</sup>Letter from Emily Witt, Attorney for Board of Education of Cicero School District 99, Del Galdo Law Group, LCC, to Leah Bartelt, Assistant Attorney General, Public Access Bureau (July 13, 2017).

<sup>13</sup>Letter from Emily Witt, Attorney for Board of Education of Cicero School District 99, Del Galdo Law Group, LCC, to Leah Bartelt, Assistant Attorney General, Public Access Bureau (July 13, 2017).

<sup>14</sup>Letter from Benjamin J. Silver, Community Lawyer, Citizen Advocacy Center, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (August 10, 2017), at 2.

<sup>15</sup>Letter from Benjamin J. Silver, Community Lawyer, Citizen Advocacy Center, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (August 10, 2017), at 6.

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- i) meet at least four times per year;
- ii) maintain on file with the school district minutes of these meetings;
- iii) review the district's annual program application to the State Superintendent of Education; and
- iv) *autonomously carry out their affairs, including the election of officers and the establishment of internal rules, guidelines, and procedures.* (Section 14C-10 of the School Code). (Emphasis in original.)

In addition, Mr. Silver argued that the Committee advises the School District Board of Education (Board) on policy matters and asserted: "This fact is highly pertinent to the analysis of OMA application, because the Open Meetings Act's declaration that public bodies conduct their business openly refers to the policymaking function of public bodies."<sup>16</sup>

After reviewing the information provided by Mr. Silver and the School District, and in light of the relevant factors, this office concludes that the Committee is not a "public body" under OMA. Although the Committee was formally established pursuant to an authorizing statute, the statute also expressly provides that "[o]nce established, these committees shall autonomously carry out their affairs[.]"<sup>17</sup> The statute's implementing regulations similarly state that the committees are to conduct their affairs autonomously. Thus, the Committee is not subject to the same oversight as, for example, the Board's standing committees, which are specifically creations of the Board and report directly to the Board. The available information suggests that the Committee serves a limited role within the School District's formal organizational structure as a liaison between the School District and parents or legal guardians of children who are enrolled in its transitional bilingual educational program. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 35973, issued August 21, 2015, at 4 (concluding that a college's Paralegal Advisory Committee was not a "public body" subject to OMA because it functioned independently and had "only a limited function within the College's formal organizational structure as a liaison between the educational program and professionals working in the legal field."). Indeed, the School Code and regulations require that the majority of committee members be parents or guardians; the committee also selects its own officers. Although the

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<sup>16</sup>Letter from Benjamin J. Silver, Community Lawyer, Citizen Advocacy Center, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (August 10, 2017), at 6.

<sup>17</sup>105 ILCS 5/14C-10 (West 2016).

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regulations require that the Committee meet at least four times a year and maintain meeting minutes with the School District, the Committee's duties appear solely advisory. In particular, the Committee provides a forum in which parents can "express their views and which ensures that such programs are planned, operated, and evaluated with the involvement of, and in consultation with, parents of children served by the programs."<sup>18</sup> While the Committee is tasked with reviewing the School District's annual program application to the State Superintendent of Education, it is not subject to specific reporting requirements to suggest it is accountable to the School District or Board. Further, any Committee feedback or recommendations are non-binding on the School District; the specific impact of the Committee's input on School District decisions is unclear. Additionally, based on this office's review of the April 21, 2017, and May 12, 2017, meeting agendas and minutes, it appears that a substantial function of the Committee is to provide parents and guardians with resources and educational opportunities related to its bilingual program, such as workshops and conferences, rather than to advise the School District on policy matters. Because the Committee lacks the key features of an advisory body, this office concludes that the Committee is not a "public body" subject to the requirements of OMA.

Because this determination concludes that the Committee is not a "public body" subject to OMA, this office need not address whether the Committee violated section 2.06(g) of OMA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,



TERESA LIM  
Assistant Attorney General  
Public Access Bureau

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<sup>18</sup>105 ILCS 5/14C-10 (West 2016).

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cc: *Via electronic mail*  
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